



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Claude Isbell
Secretary of State
Austin, Texas

Dear Mr. Isbell:

Opinion No. O-6739

Re: Construction of Senate Bill No. 317, General Appropriation 49th Legislature, Items 20 and 33, Secretary of State Department, with respect to the Secretary's authority to pay such additional employee in charge of paroles from the item of "Extra Help, Seasonal."

Your inquiry for an opinion upon the above subject-matter is as follows:

"There is set up in the Appropriation Bill a place in our office as 'Governor's Assistant in Charge of Parole', which place only pays \$2310.00 per annum. Recently the man who had this place resigned, and we are unable to fill the place satisfactorily at that figure, and in view of the importance of the place in the handling of several thousand parolees, I would like to be advised on the following questions:

"(1) Would this office be authorized to set up a new place to be designated as 'Parole Supervisor'?

"(2) Would we be authorized to pay for his services at \$220.00 per month payable out of our fund styled 'Seasonal Help'?

"(3) If you answer in the affirmative to the above, then would the Governor be authorized to issue a deficiency warrant in our favor when we have exhausted our 'Seasonal Help Fund'?"

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The appropriation for the Secretary of State Department of the General Appropriation Bill for State departments passed by the 49th Legislature contains the following items, which are involved in your inquiry, to-wit:

"20. Governor's Ass't in Charge of Paroles \$2,310.00 2,310.00",

and

"33. Extra help, seasonal..... 3,450.00 3,450.00."

You have explained to us in conversations respecting the inquiry that it was not your purpose to abolish or ignore the position provided for in Item 20, but that it was your thought to appoint another employee to assist in the same work during the period of necessity therefor, and to pay such other employee, as indicated in your letter, out of Item 33. There would be no attempted augmentation of the salary provided for the Assistant mentioned in Item 20.

Item 20 does not create, nor could the Appropriation Bill in any event create, the office or position of Governor's Assistant in charge of Paroles, by that or any other name. It is the sole function of an appropriation bill to appropriate moneys for the compensation of employees legally and factually necessary to the efficient operation of the Department. (See our Opinion No. O-6731, copy herewith).

Item 33 for extra seasonal help is a very broad and general authority to your Department, the only limitations being that such positions being in the nature of temporary emergency needs with respect to departmental service, and the total sum available therefor, whatever the nature of the service, or the number of the assistant employees. There is no legal necessity for the giving to any additional employee performing the services as seasonal help any particular designation. For accounting purposes it would be advisable, and perhaps necessary, to do this, however, so that payment could be made from the appropriate fund. This is matter of departmental discretion, however.

In the general provisions included in the Departmental Appropriation Bill at paragraph d. of subsection (14) of Section 2 is the following:

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"Additional Employees' Compensation. When any additional employees other than those for which specific salary appropriations have herein been made, are employed and are to be paid out of contingent appropriations, such employees shall not be paid a larger amount than that provided in the regular appropriated salaries for similar positions in such department or agency, and in the event there are no similar positions within such department, then such additional employees shall not be paid a larger amount than that provided for similar positions in other departments or agencies. * * *."

It is our opinion that Item '33 for extra help, seasonal, is a contingent appropriation, within the meaning of this general provision governing salaries for additional employees. From this it follows that such additional employees may not be paid a salary in excess of that prescribed for the Governor's assistant in charge of paroles.

Under Article 4351 of the Revised Civil Statutes, the Governor would be authorized to approve a deficiency claim for the payment of seasonal extra help of your Department, within the limitations of the Appropriation Act itself, of course. Our Opinion No. 0-2118, addressed to Governor W. Lee O'Daniel goes quite fully into the whole matter of deficiency warrants, and we are handing you herewith a copy of that opinion.

In Opinion No. 0-1332 this Department had before it the following inquiry:

"May a department head employ an additional employee and place him on the regular payroll, paying his salary out of the contingent appropriation, or does the contingent appropriation comprehend a temporary or an emergency situation authorizing the employment of additional employees for such purposes?"

We answered:

"Having due regard to the context in which we find the word, and the specific authorization for the use of such funds for such purposes, we are impelled to the conclusion that the Legislature has said substantially this: 'We have attempted, so far as possible, to anticipate every item of expense, which necessarily be incurred in the operation of your department, when we realize that our

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judgment as to such matters may be inexact, from the very nature of things, and we therefore appropriate to your Department a sum of money generally available for operating expenses of your Department, except as otherwise herein specifically limited, to take care of those employments and other expenses not herein specifically provided for, but which may necessarily be required to enable your Department properly to function."

We trust that what we have said sufficiently answers your problem.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Spier
Ocie Spier
Assistant

OS-MR

Enclosure

APPROVED AUG 2, 1945
[Signature]
ASSISTANT
ATTORNEY GENERAL